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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

UNITED STATES OF AMERICA, Plaintiff, -v- VARIOUS GOLD, SILVER AND COINS; UP TO \$550,542.07 IN FUNDS, et al, Defendants.	Civil Action No. 3:11-cv-01179-SI CLAIMANT JAMES G. COLE'S DECLARATION IN SUPPORT OF CLAIMANTS' MOTION FOR RETURN OF PROPERTY
CLAIMANTS JAMES G. COLE, an individual, JAMES G. COLE, INC., a corporation, and SONIC LIFE.COM, LLC, formerly known as SONIC HEALTH SYSTEMS, LLC, a limited liability company. Claimants.	

I, James G. Cole, under penalty of perjury, declare the following:

1. I am a claimant in the above-captioned matter and the sole owner of the other claimants in this case, Maxam Nutraceutics (“Maxam”) and Sonic Health Systems, LLC (“TurboSonic”), and I make this declaration based upon matters personally known to me. Maxam makes and sells nutritional supplements, and TurboSonicUSA is the North and South American Distributor of the TurboSonic device, which is an exercise machine that stimulates cells through sonic wave vibration activity. Claimants seek the following, alternative relief:

- (i.) A return of sufficient funds (from those seized) on a monthly basis so that we do not collapse financially, an amount we show below to be \$30,000.00 per month; or
- (ii.) An evidentiary hearing now so that the government *at least* satisfies this Court that there is a sound basis for the continuing retention of all of our assets it now controls and will not let us use. Such an evidentiary hearing is at the very least needed because the government affidavit that was submitted *ex parte* to obtain the seizure of certain of our assets and to support the forfeiture of our assets is not enough to warrant seizure, much less forfeiture.

2. One of these forms of relief is needed now because of the financial conditions suffered by Maxam and TurboSonic caused by the seizures and the long delay before trial.

Summary of the Financial Effect of the Government Seizures

3. As of now, Maxam and TurboSonic cannot meet their combined operating expenses as I show below. Before the government's two seizures of our property, both Maxam and TurboSonic had ample resources to continue their growth. Before the first seizure in April 2011, Maxam and Turbonic had over \$120,000.00 in cash in their combined bank accounts. They

had no outstanding debts. They each had ample inventory of product and sales were steady. They could easily meet their payroll and other obligations each month and were indeed growing.

4. As of now Maxam (which sells nutritional supplements) has a total of \$18,400.00 in its bank account. It has some inventory which it acquired after the government seized the \$383,000.00 inventory it had in stock. However, Maxam has run up debts in the amount of \$94,600.00. Its current sales per month are \$15,000.00. Its current payroll and other major expenses and obligations on a monthly basis are as follows:

Payroll:	\$13,310.00
Rent:	\$ 2,600.00
Insurance:	\$ 2,000.00
Office (telephone, utilities, internet)	\$ 1,100.00
Total monthly costs:	\$ 19,010.00

5. As for TurboSonic (the company selling our sonic exercise machine), it has at present \$36,200.00 in its bank account. It has few workable TurboSonics to sell, and indeed its TurboSonics are backordered to customers because they remain popular, but it has no money to finance shipments from Korea of TurboSonics which the Korean manufacturer will only sell by the container, which would cost approximately \$200,000.00 minimum. TurboSonic simply does not have these funds. TurboSonics monthly costs are:

Payroll:	\$10,722.00
Rent and Warehouse:	\$ 6,200.00
Insurance:	\$ 680.00
Office (telephone, utilities, internet)	\$ 2,000.0
Total monthly costs:	\$ 19,620.00

6. The combined monthly costs of Maxam and TurboSonic are \$38,630.00 and its current monthly revenues are \$15,000.00. Their combined cash reserves of \$54,600.00 (their combined current bank balances) will not even pay off Maxam's past due debt of \$94,600.00, much less keep these companies afloat by paying their monthly costs. The \$30,000.00 per month sought by this motion will allow Maxam to survive, pay our monthly cost and slowly retire Maxam's accumulated debt. Then, when this case gets to trial, we expect to prevail, obtain return of the approximate \$700,000.00 in cash and gold taken from us, replenish our supply of TurboSonic devices, fill the backorders we now have for that product, regain the TurboSonic devices seized by the government, and repair and sell them on the secondary market. Again, we have no funds to do so now.

The Seizures and the Ongoing Contact with Our Customers

7. Nineteen months ago, on April 7, 2011, the government seized \$383,303.00 worth of Maxam products, along with some 35 older TurboSonic machines, \$520,000.00 worth of gold, and 220 boxes of company files including many of our original documents, customer contracts, research data, and all of our customer and vendor files. The loss of use of the files was disruptive in and of itself. The search resulting in this seizure was in Hood River, Oregon, the small community in which our businesses are located. The search party was 47 armed, flak-jacketed agents who searched my personal home, the TurboSonic offices, the Maxam Labs offices, and our separate "Big Gym" exercise facilities. The search and seizure was very visible and made a big public scene, itself harming our businesses as the local community observed armed and uniformed agents hauling boxes of records and truckloads of exercise machines from our businesses.

8. Then, six months later, on September 29, 2011, the government made a second seizure, this time of all the operating cash reserves of Maxam and TurboSonic, which totaled \$144,302.68, resulting in the closure of 6 bank accounts and 6 merchant accounts, all of which had been established for over 17 years with impeccable credit scores. Only then did the government file its forfeiture action.

9. Next, in December of 2011, the government made a third seizure, including a home in which my daughter was living in California, and a Toyota pick-up truck owned by my company. In order to regain the truck for company use, we had to pay the government \$17,000.00, money we could ill afford in these circumstances.

10. All of these seizures were done without any prior notice, questioning, or opportunity to be heard. We therefore were caught completely by surprise and had no ability to prepare financially for these financial onslaughts.

11. I believe that very few small businesses, no matter how fundamentally sound and no matter how loyal their customer base and hardworking their employees, could survive under the circumstances we have faced. And while claimants are unable have a trial where the government would have to show that it can meet its burden of proving its allegations, because of the stay, the government agents continue to contact our customer base, telling them by a letter sent in July, 2012 that it is conducting a criminal investigation of our businesses, frightening many of them, and further disrupting our business operations. *See*, Supplemental Cole Declaration and Attachments. (Docket No. 44). Maxam and TurboSonic customers have also informed us that government agents call them, or send questionnaires as part of an ongoing criminal investigation. This also hurts our business yet we cannot fight back. Indeed, just several days ago we received another telephone call from a customer in Colorado. She stated that she

was called by the FDA, told they were investigating Maxam for criminal violations and, in an accusatory manner, pressed her repeatedly about why she had purchased so many products from Maxam Labs and what she was doing with them. This older woman was bedridden, and had just returned home from a hospital stay. This customer was very troubled, crying on the phone, and wanted to know how the FDA had gotten all of her information. This is not an isolated incident. We mention this particular one just to show that their contact with our customers has continued. The point here is that while the government is out frightening away our customer base, we are frozen and cannot even tell our customers that this matter will soon be tried and that we will have our day in court.

12. It will be a tragedy for our companies and employees, and harmful to the community, if we go out of business after 17 years if the government is ultimately proven wrong, as we believe it will be. In our community of Hood River, our companies pay 13 salaries (but three employees have been laid off because of our financial situation), pay taxes on those salaries, rent space in three different offices totaling over \$100,000.00 per year, purchase a host of local products and services for the operation of our businesses in and around Hood River, host the U.S. and Canadian Olympic winter sports teams training at our Gym facility, and donate to local charities and organizations whenever possible. None of us deserve to be deprived of our livelihoods and property without at least having an opportunity, before it is too late, to show this Court our side of the story, on the merits, in public.

13. In the twelve months prior to the government's initial raid and seizure of our assets, the combined annual earnings after costs of Maxam and TurboSonic totaled \$473,526.10. In the twelve months since the government's raid and continuing contact with our customer base, we have suffered a combined loss of \$136,503.84. These figures are detailed below. The reason

for the fall off from a profit to a loss has been the taking from us of the gold, cash and product inventory by the government, done in a way that allowed us no time to plan commercially.

14. Up to this point (through October 31, 2012) we have survived largely through spending my own personal savings and selling product at a discounts. I no longer have the savings to pay out and we no longer have the inventory to sell at a discount to raise cash.

15. Below are the specifics of the adverse effects of the seizure and the long delay on both Maxam and TurboSonic. These include a brief description of the companies, a list of employees and a detailing of the monthly cash shortfalls as a result of the government seizures. We set forth these details to show that what is at stake here are real companies with good and true employees. Surely they deserve a day in court before it is too late. We need money if the government is going to delay, or a prompt evidentiary hearing of some kind by which we believe we will be vindicated.

Maxam's Background

16. Maxam and its sale of Maxam products has evolved over the last 17 years. It has its offices at 1020-D Wasco Street, Hood River, Oregon, where its eight employees work.

17. The Maxam story is genuine. I have been studying nutrition, and the effect of amino acids, herbal medicine, and homeopathy, for my entire adult life. A summary of my lifelong involvement with nutrition and health is attached as Exhibit "A." Twenty years ago I was told that I had the same cancer gene that had taken my father at a young age. I decided to dedicate my life to learning how to help prevent cancer and other serious illnesses. I truly believe that there are real treatments for many of the more serious diseases and that those treatments are found in alternative medicine. My work and the hundreds of testimonials sent by Maxam customers have made me believe in our products. My sales of them and my statements about

them have never been fraudulent. I use all of our products as do most of Maxam's employees, all of whom truly believe in their worth and in what each employee says to customers about them. We do not lie to our customers.

18. Over the years, our company has grown and we have added good and true employees, not one of whom has any criminal record. Most are in their 40's or 50s and are longtime residents of the Hood River area, with homes and families that will be devastated if they lose their jobs.

19. They are:

James Cole: Chief Executive Officer, 20 years in the natural products industry.

Julie Graves: General Manager. She supervises product delivery to customers, oversees packaging and shipping, maintains inventory, takes care of accounts receivable and performs many administrative tasks. Oversees the day-to-day operations. She has been an employee for over ten years.

Aida Elisea: Shipping, Production Manager. She assists with product fulfillment and handles shipping and receiving. She has worked for Maxam for nine years.

Mary Morehouse: Office bookkeeper. She is in charge of financial matters and all accounts payable for Maxam and TurboSonic. She monitors all bank accounts and credit card accounts and keeps the books and records, working directly with the accountant on state and federal tax preparation. Due to child care issues, she is now working part time as a private contractor. She has worked for James G. Cole, Inc., for three years.

Chris Vail: Graphic design and marketing. She has worked for James G. Cole, Inc for three years and also became a private contractor in July 2011.

Christy Cole: Customer service. She has been employed by Maxam for over nine years.

Howard Wellar: Customer service and IT administrator. He has been working for TurboSonic USA for the last two years. Prior to that, he worked for Maxam for over eight years.

Mayra Ugarte: Customer service. She is a new hire as of June 2012, but has since been laid off due to cutbacks cause by the government seizures.

20. The seizure has had a devastating effect on Maxam.

Maxam's books reflect that in the twelve months before the first seizure in April, 2011, its profit was \$295,436.04. In the 13 months since the second seizure in September, 2011, Maxam's loss has been \$171,043.94.

Pre-Seizure Financial Picture of Maxam

APRIL 2010

SALES \$114,505.87
Costs of Goods Sold ("COGS") \$16,719.09
OPERATING EXP \$34,343.62
PROFIT \$63,443.16

MAY 2010

SALES \$102,661.76
COGS \$13,137.61
OPERATING EXP \$67,269.98
PROFIT \$22,254.17

JUNE 2010

SALES \$119,371.05
COGS \$21,723.16
OPERATING EXP \$43,337.82
PROFIT \$54,310.07

JULY 2010

SALES \$103,714.75
COGS \$29,809.15
OPERATING EXP \$80,321.23
LOSS \$6,415.63

AUGUST 2010

SALES \$92,146.96
COGS \$15,081.94
OPERATING EXP \$55,810.24
PROFIT \$21,254.78

SEPTEMBER 2010

SALES \$113,561.58
COGS \$22,754.27
OPERATING EXP \$48,904.86
PROFIT \$41,902.45

OCTOBER 2010

SALES \$117,381.67
COGS \$19,119.91
OPERATING EXP \$59,796.84
PROFIT \$38,464.92

NOVEMBER 2010

SALES \$92,030.34
COGS \$8,779.90
OPERATING EXP \$46,413.92
PROFIT \$36,836.52

DECEMBER 2010

SALES \$91,067.24
COGS \$69,586.05
OPERATING EXP \$58,076.24
LOSS \$36,595.05

JANUARY 2011

SALES \$90,340.16
COGS \$7,444.08
OPERATING EXP \$35,531.45
PROFIT \$47,364.63

FEBRUARY 2011

SALES \$57,155.54
COGS \$6,965.26

OPERATING EXP \$46,433.36
PROFIT \$3,756.92

MARCH 2011

SALES \$89,529.57
COGS \$20,923.93
OPERATING EXP \$59,746.54
PROFIT \$8,859.10

The profit during this pre-seizure period was \$295,436.04.

The Financial Impact of the Seizures

21. Since the seizures Maxam has lost money, specifically \$171,043.94. On April 7, 2011, the first seizure, the government seized Maxam Products, packaged and ready to sell, having a retail value of \$383,303.00. Maxam obviously had to make a costly scramble to buy new products so that our customer base would not drift away.

22. The government also, in the April seizure, seized \$520,000.00 worth of Maxam's gold reserves. Gold is used in manufacturing our products (see below). We had purchased this gold between 2008 and 2010 when its price was approximately \$725.00 per Troy ounce. At the time of seizure by the government, it was valued at \$1,200.00 per ounce. Its rising value is indeed why we had purchased so much of it. Today the price is \$1,674.00. In 2008 when I began to stockpile gold, economists predicted its price would increase 500% in the next 5 years.

23. The government has stated that the possession of gold is evidence of tax evasion because I had "falsely" treated its purchase on my tax returns as a "cost of goods" They are wrong. As per our agreement in supplying raw materials to the manufacturer of our Maxam products, I am required to send this gold to him because he uses it in the manufacturing process.

24. Despite what the government may think, gold is frequently used in the manufacture of nano particle products such as Maxam sells because it is an excellent, natural,

ion-charged catalyst, doing what needs to be done chemically but precipitating out very cleanly. In Exhibit "B" to this declaration I quote for this Court one recent writing on some new findings about the use of gold in this manner. [This process was explained to the United States in detail in answer to its first set of interrogatories in December 2011, which we answered before the stay.]

25. The loss of our gold reserve had additional adverse effects on Maxam than simply the loss of the large cash asset. Maxam thereafter had to send extra money to our manufacturer so he could buy his own gold. Thus far, this has increased the current cost of our products greatly. Before the April, 2011 seizure of our gold reserve, we could simply take from our gold inventory and send that gold to our supplier without draining our current cash deposits. However, since April 2011, Maxam has had to pay out-of-pocket cash (rather than our stockpiled gold) to buy gold at current gold prices. This has further drained our cash by \$50,000 since the seizure. Again, this cost was unanticipated and we had no notice. This harm was cumulative because, as shown above, much of our product inventory -- \$383,303 worth -- was also seized requiring a massive new purchase. This not only required that we send cash to our supplier for gold to be purchased by him rather than sending him gold we had already purchased for this purpose, but we had to buy much more product than originally thought since all of our product inventory was seized.

26. Then, on September 29, 2011, now over thirteen months ago, the government seized all the money in the Maxam and TurboSonic bank accounts, totaling \$144,302.68. Maxam and TurboSonic were left with no money for advertising, product replenishment, or even to pay wages, or rents.

27. The effects of these seizures on Maxam's earnings has been as follows:

OCTOBER 2011 (The First month after the Second Seizure)

SALES \$18,273.25
COGS \$35,710.74
OPERATING EXP \$74,911.35
LOSS \$92,348.84

NOVEMBER 2011

SALES \$83,283.11
COGS \$44,831.01
OPERATING EXP \$55,687.32
LOSS \$17,235.22

DECEMBER 2011

SALES \$50,877.01
COGS \$14,186.90
OPERATING EXP \$99,897.00
LOSS \$63,188.89

JANUARY 2012

SALES \$47,792.30
COGS \$22,375.89
OPERATING EXP \$33,674.46
LOSS \$8,258.05

FEBRUARY 2012

SALES \$35,876.26
COGS \$3,846.62
OPERATING EXP \$37,556.08
LOSS \$5,526.44

MARCH 2012

SALES \$77,267.48
COGS \$6,002.22
OPERATING EXP \$51,507.88
PROFIT \$19,757.38

APRIL 2012

SALES \$59,978.17
COGS \$19,228.58
OPERATING EXP \$50,170.73
LOSS \$9,421.14

MAY 2012

SALES \$61,641.92
COGS \$16,146.93
OPERATING EXP \$52,594.47
PROFIT \$48,614.07

JUNE 2012

SALES \$61,034.56
COGS \$33,360.86
OPERATING EXP \$55,534.92
LOSS \$27,861.22

JULY 2012

SALES \$73,136.60
COGS \$14,485.40
OPERATING EXP \$52,087.73
PROFIT \$6,563.47

AUGUST 2012

SALES \$47,051.72
COGS \$13,386.71
OPERATING EXP \$55,804.07
LOSS \$22,139.06

SEPTEMBER, 2012

SALES \$64,439.09
COGS \$16,345.01
OPERATING EXP \$53,908.69
LOSS \$5,814.67]

This summary shows that in the twelve months before the first seizure Maxam's profit was \$295,436.04 and in the 13 months since Maxam's loss was \$171,043.94

28. I have used my own personal savings to cover these losses. I had to do so. We lost revenue because we had little product to sell. We had increased costs because the government had seized all our inventory and the gold and cash we would have used to replace that inventory. I have spent a total of \$190,000 and my savings are now depleted to the point

where I no longer have any money to make the shortfall payments. Along with my savings, I have kept Maxam afloat by using profits from sales at my other company, TurboSonic. And, as shown below, the TurboSonic inventory is now depleted and we have no funds to buy more inventory. Thus both sources of funds needed to operate Maxam, and now TurboSonic, are now gone.

The TurboSonic Business

29. TurboSonic has offices in Hood River at 1027 Industrial Loop, where its employees work.

30. The TurboSonic machine is a cutting-edge whole body exercise device designed as a non-stressful method of completely exercising 100,000,000 cells all at the same time without any energy being spent to complete the task. This is accomplished by sonic vibrations emanating from the base of the machine on which its user stands. These machines are bought exclusively from our Korean supplier, T.S. Korea. This machine has been sold by TurboSonicUSA for between \$7,500 and \$15,995. Since 2006 we have sold approximately 1,500 TurboSonic devices in the United States and exported about 30 machines to other countries. Virtually all of our TurboSonic customers absolutely rave about it as the many testimonials we have from them (referred to in our Opposition to the Stay (Docket No. 42) and in the Memorandum accompanying this motion. It has proven itself over the years to be the premier whole body vibration device available today.

31. When the government searched our offices, it seized all of our TurboSonic machines located there. Most were older models that needed to be refurbished so that they could be sold on the secondary market. They also took several of our newer models. If these older units

had not been seized, we were planning to refurbish and then sell them on the secondary market. Now we have no cash to do so.

32. After the government seized all the operating cash from our accounts, we were forced to quickly make discount sales of our remaining TurboSonic machines in order to raise cash to continue to operate, using some of those proceeds to cover the shortfall at Maxam, described above.

33. However, because the government seized much of our inventory we only had a few TurboSonic machines left to sell. Currently our new popular models are sold out and we cannot afford to buy any more from our supplier.

34. The TurboSonic remains very popular. They are back-ordered and we could sell many more if we only had the operating cash the government took from us because that would allow us to purchase new machines from our suppliers. This inability to fulfill our order obligations to our supplier has not only put our financial future in question, but also placed our supplier's financial future in question as well, since we were his principal purchaser.

35. Prior to the raid we were considering buying out our supplier along with their patent assignments and trademarks so that the TurboSonic device could be manufactured in the United States. We would then be exporting it throughout the world and could have added many jobs here in the United States. This option has become a distant illusion due to the events described above, and certainly will not be revived before a trial of this matter.

36. Below are the names and brief job descriptions of my TurboSonic employees. If this case continues on its current course they will soon permanently lose their jobs with TurboSonic.

Denise Jiminez: Office manager and customer service representative. She also represents TurboSonic at tradeshow. She has been an employee for five years.

Sarah Rogers: Customer service representative and assistant to Denise Jimenez. She has been an employee for nearly two years.

Howard Wellar: Customer service representative. He has been an employee for the past two years and previously was working out of the Maxam office for eight years.

Jeremy Posey: TurboSonic device technician. He has been an employee for the past year and a half.

James Cole, Jr.: General maintenance for TurboSonic and Maxam on an as needed basis. Has since been laid off due to government seizures

The aggregate pay each month is \$9,550.00. Taxes are paid and they live in the community. Not one of them has a criminal record.

37. Below is a summary breakdown of TurboSonic's revenues and costs of sales both pre-seizure and post-seizure.

TurboSonic's Pre-Seizure Financial Picture

APRIL 2010

SALES \$166,947.46
COGS \$49,238.90
OPERATING EXP \$45,546.84
PROFIT \$72,161.72

MAY 2010

SALES \$262,568.51
COGS \$94,167.98
OPERATING EXP \$30,583.17
PROFIT \$137,817.36

JUNE 2010

SALES \$109,818.89
COGS \$212,148.45
OPERATING EXP \$48,905.03
LOSS \$151,234.59

JULY 2010

SALES \$156,561.72
COGS \$45,870.67
OPERATING EXP \$62,018.08
PROFIT \$48,672.97

AUGUST 2010

SALES \$110,637.22
COGS \$37,662.94
OPERATING EXP \$40,742.63
PROFIT \$32,231.65

SEPTEMBER 2010

SALES \$112,715.90
COGS \$18,612.77
OPERATING EXP \$50,432.03
PROFIT \$43,671.10

OCTOBER 2010

SALES \$73,940.17
COGS \$12,052.72
OPERATING EXP \$36,598.65
PROFIT \$25,288.80

NOVEMBER 2010

SALES \$82,042.65
COGS \$162,831.39
OPERATING EXP \$36,945.77
LOSS \$117,734.5

DECEMBER 2010

SALES \$151,872.33
COGS \$200,693.79
OPERATING EXP \$59,592.15
LOSS \$108,413.61

JANUARY 2011

SALES \$190,665.13
COGS \$57,741.67
OPERATING EXP \$31,808.53
PROFIT \$101,114.93

FEBRUARY 2011

SALES \$173,380.78
COGS \$32,457.54
OPERATING EXP \$35,463.14
PROFIT \$105,460.10

MARCH 2011

SALES \$61,051.71
COGS \$25,636.47
OPERATING EXP \$46,361.10
LOSS \$10,945.86

Post-Seizure Financial Picture

OCTOBER 2011

SALES \$46,521.52
COGS \$6,630.93
OPERATING EXP \$10,303.30
PROFIT \$29,587.29

NOVEMBER 2011

SALES \$37,429.93
COGS \$2,654.97
OPERATING EXP \$59,830.17
LOSS \$25,055.21

DECEMBER 2011

SALES \$112,819.95
COGS \$-20,907.96
OPERATING EXP \$75,681.25
PROFIT \$58,046.66

JANUARY 2012

SALES \$48,203.39
COGS \$18,155.80
OPERATING EXP \$20,130.91
PROFIT \$15,345.58

FEBRUARY 2012

SALES \$26,103.26
COGS \$12,235.60
OPERATING EXP \$28,189.09
LOSS \$17,146.22

MARCH 2012

SALES \$15,427.25
COGS \$7,381.97
OPERATING EXP \$37,534.10
LOSS \$29,488.82

APRIL 2012

SALES \$78,470.75
COGS \$13,715.26
OPERATING EXP \$24,682.36
PROFIT \$40,073.13

MAY 2012

SALES \$36,640.00
COGS \$7,711.60
OPERATING EXP \$37,611.19
LOSS \$8,682.79

JUNE 2012

SALES \$45,122.64
COGS \$13,553.14
OPERATING EXP \$28,491.19
PROFIT \$3,078.31

JULY 2012

SALES \$6,110.95
COGS \$3,743.79
OPERATING EXP \$27,544.48

LOSS \$25,177.32

AUGUST 2012

SALES \$32,088.47
COGS \$4,698.37
OPERATING EXP \$33,430.61
LOSS \$6,040.51

SEPTEMBER 2012

SALES \$34,355.00
COGS \$8,020.06
OPERATING EXP \$14,664.70
PROFIT \$11,670.24

The total amount of TurboSonic profit before the seizures was \$178,090.06 and the profit after the seizures was \$34,540.06. That profit was used to help pay some of the costs of Maxam, which has suffered more losses as the financial picture shows. The trend is all down, as the recent months show, and we have and can purchase no more product.

The Big Gym

38. There is another company that was searched on April 7, 2011 and it is now at risk of closing its doors, and its employees also losing their jobs. That is "Big Gym," our exercise facility which used TurboSonic machines and sells Maxam products.

39. In 1994, I was living in Hood River and running my business ASN (Advanced Sports Nutrition) out of TNT tanning salon in The Dalles, Oregon. I was about to move my company to the Portland area when a 13,000 square foot warehouse building became available in Hood River. I quickly filled out an application for a lease, and we moved in. At that time, with all the athletes living in the Columbia Gorge area, there was only one workout facility, which was more of a racquetball club. I used a portion of the building for ASN, and in the other half I opened the Big Gym. Because nearby Mt. Hood is the only ski facility open in the summer

months in North America, our gym quickly became the official summer home of the Canadian and United States Olympic Ski and Snowboard teams that came to Mt. Hood to ski. Many of the team members and coaching staff purchased homes in Hood River because of our facility. We also host many of the summer ski and snowboard camps for kids. Since 1995, we have been voted the most complete workout and training facility in the Pacific Northwest. At any given time, we have about 100-125 professional athletes training at our facility. The Big Gym offers much more equipment than the small population of Hood River can actually support, and has been run more as a community service facility for the last 18 years. We have been open 365 days a year for over 18 years.

40. We also support all community and school events, and hire high school students whenever possible. We allow the schools to bring in Special Education classes, host Special Olympics training, and offer free and discounted memberships for police, fire, and military personnel, county workers, students, seniors, school teachers, hospital employees, and others.

41. The Big Gym has never been a moneymaker, but up until the search and seizure of April, 2011, it has always seemed to stay in the black for the 18 years we have been in business, and has been an asset and an icon to the small community of Hood River, and the Columbia Gorge.

42. On the day of the search, we were open for business. Five members quit that day and wanted their money back, due to the loud, aggressive, and abusive nature of the agents conducting the raid. A month later when an article about the raid and me being a "racketeer" and "money launderer" ran on the front page of the local newspaper, and several online business journals ran the story with my picture, then over 50 more members quit and demanded their memberships refunded.

43. In a small town, 55 members can make the difference between staying in, or going out, of business. They of course told their friends, who told their friends, and the great Hood River raid is still alive and the talk of this small Oregon town. For the last 18 months the Big Gym has been struggling to keep the doors open, and has been borrowing funds from Maxam Labs just to make payroll, and pay rent. This can no longer happen because Maxam has no more funds. Big Gym has the following employees whose jobs are at risk.

Cathy Fisher – Gym manager - has worked for me for 14 years

Steven Nash – Customer service - has worked for me for 1+ year

Townsend Shaw – Customer service, has worked for me for 3 years

Sean Tamara – Customer service, has worked for me for 4 months, replacing two people now gone.

44. After 18 years of dedicated community service our Big Gym is now dying, all before we will be able to report the outcome of the jury trial to which we should be entitled before it is too late.

Conclusion

45. I fully recognize that the government has the authority to conduct searches in virtually any manner it wants. But it has been extremely heavy handed in this case, with armed flak-jacketed agents numbering 47 in total entering my home and offices where middle-aged people were heading to work. At the very least it ought to bring the same vigor to finishing up its criminal investigation so that all these good people may try to keep their jobs and these businesses do not have to close, at least until this Court has an opportunity to weigh the evidence.

46. We are also aware that the government receives great deference while it conducts a criminal investigation. But here, it started this investigation now over 30 months ago. It has publicly filed a case containing ruinous but totally unproven allegations against myself, our companies, and their products. Loans and credit lines that were once available to Maxam and TurboSonic because of their 17-year excellent credit rating are no longer available due to the government's highly damaging public statements and actions, statements and actions that our now un rebuttable by us because of the stay. Thus we have to live off of cash, and we do not have enough.

47. It was also revealed -- during the eleven depositions taken in this case before the government obtained a stay -- that this federal investigation started in April of 2010 by a telephone call from an ex-employee we had fired, as she admitted at her deposition and who, we will show at trial, was extremely bitter, very vindictive, and was only seeking revenge. She had threatened this type of action numerous times to my other employees if I ever fired her. Since this fired employee was the origin of this investigation, and since the government has produced no evidence of fraud, money laundering, or racketeering, we should have an opportunity to rebut its conclusory allegations or be able to confront any real evidence they claim to have, before we go out of business.

48. In the 30 months that this investigation has been ongoing, I have never been questioned, contacted, audited, deposed or otherwise asked to give a statement. We have also never been able to depose the FDA agent responsible for the search, or had access to the notes of her conversation with the ex-employee who started this entire process. The government has however contacted and frightened away many of the long time friends, and customers in my database of 60,000 contacts, with their relentless phone calls, letters, and the criminal

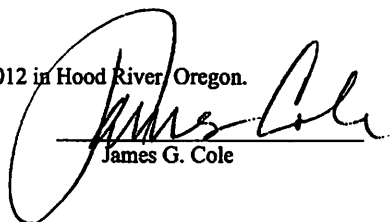
implications made in their contacts. All of this 30-month investigation went on in secret, without hearing my side of any story.

49. Since I was a young child, I was raised as the proverbial Boy Scout, and truly believed in our government, our Department of Justice, our due process, our Constitution, and our bill of rights. I actually thought of myself, and was proud to be a great American, living my life in service to all humanity, and at the absolute highest levels of integrity, honesty, and truth. Now, after having been made a federal target for the last 30 months by the lies and speculations told by one vindictive, presumably scorned ex-employee to a newly hired, over-reactive FDA investigator, and watching my life, my life's work, and my entire character destroyed by the absolute absence of justice, I can see it has all just been an illusion. The fired ex-employee new exactly who to contact, and what to say to fulfill her vindictive last words. As she left my office for the last time, she stated: "I will do whatever's necessary to completely destroy your life."

50. I hope to have a hearing before that happens, my businesses fold, my longtime employees lose their jobs, Hood River loses the financial and other contributions we make to the community, and my customers lose their nutritional supplements and TurboSonic supplier, products that have resulted in many hundreds of testimonials from individuals about how well our products have helped them -- testimonial that do not come close to violating the mail and wire fraud statutes but are instead honest reflections of our customer base.

I declare under penalty of perjury that the foregoing is true and correct to the best of my belief.

Executed this 6th day of November, 2012 in Hood River, Oregon.



James G. Cole

EXHIBIT "A"
(Cole Biography Relating to Maxam Products)

Jim Cole's Lengthy Involvement With Nutritional Study and Products

After a good career as an engineer in Northern California and upon learning that I had the same cancer gene that had caused my father to die, and because others near to me had died early because of serious illnesses, I moved to Hood River twenty years ago and began studying in earnest cellular biology and the interactions of nutrient absorption in the body, as they relate to human health. I started volunteering at a local health food store to learn as much as possible about the natural products industry.

I quickly became convinced that I could make better nutritional products than those available. I spent considerable time with a company called East Earth Herbs learning all about traditional herbal extraction methods and then started the company Advanced Sports Nutrition ("ASN"). Through ASN I became a developer and distributor of very cutting edge sports nutrition supplements. ASN developed a line of about 130 top-quality products for bodybuilding, sports nutrition, longevity and general health. With every product I developed it was first for me, then for the members of the gym I was operating ("Big Gym," located at 1813 Cascade Street, Hood River), and then for the general public.

It was at this time I was introduced to a brilliant Boston chemist, who was also developing very unique dietary supplements. With the help of his research and products, Maxam was born. Maxam adopted an entirely new concept in dietary supplements. Rather than conventional milligrams where the body actually rejects 95% of the nutrient, he was developing products through a patented fermentation process that allowed much greater absorption of the nutrients. This involves micro, nano, pico, and femto nutrient fractions which are ionically charged and enzymatically active, in homeopathic amounts. This process is more natural,

simpler, and more effective. Our customer letters and testimonials show how much these products have become valued.

One of our first efforts was to attempt to combat detoxification, and the elimination of our lifetime absorption of chemicals and poisons. We developed "PCA" which has been our main product for the last 15 years. One thing we hear repeatedly from our thousands of satisfied customers over the years is "finally a product line that works." We have since expanded to many other products.

Maxam now sells small bottles of its products at prices between \$9.95 and \$99.99. We have a very large and dedicated customer base. They love our products, as their testimonials accompanying our earlier opposition to the stay showed.

Over the years, as part of our continuing research, we have employed several third-party chemists and other research facilities at an expense ranging from \$15,000.00 to \$50,000.00 per month. To date, I have personally invested about 3 million dollars into the research and development of this technology. I have done this because I truly believe in them. This has resulted in many good developments that have gone into our products.

I believe in our products and what they can do to help support people with serious illnesses and with general well being.

EXHIBIT "B"

**(Article on the Use of Gold in Manufacturing,
Referred to in Cole Declaration Paragraphs 20-24)**

ScienceDaily (Aug. 8, 2012) — DNA holds the genetic code for all sorts of biological molecules and traits. But University of Illinois researchers have found that DNA's code can similarly shape metallic structures.

The team found that DNA segments can direct the shape of gold nanoparticles -- tiny gold crystals that have many applications in medicine, electronics and catalysis. Led by Yi Lu, the Schenck Professor of Chemistry at the U. of I., the team published its surprising findings in the journal *Angewandte Chemie*.

"DNA-encoded nanoparticle synthesis can provide us a facile but novel way to produce nanoparticles with predictable shape and properties," Lu said. "Such a discovery has potential impacts in bio-nanotechnology and applications in our everyday lives such as catalysis, sensing, imaging and medicine."

Gold nanoparticles have wide applications in both biology and materials science thanks to their unique physicochemical properties. Properties of a gold nanoparticle are largely determined by its shape and size, so it is critical to be able to tailor the properties of a nanoparticle for a specific application.

"We wondered whether different combinations of DNA sequences could constitute 'genetic codes' to direct the nanomaterial synthesis in a way similar to their direction of protein synthesis," said Zidong Wang, a recent graduate of Lu's group and the first author of the paper.

Gold nanoparticles are made by sowing tiny gold seeds in a solution of gold salt. Particles grow as gold in the salt solution deposits onto the seeds. Lu's group incubated the gold seeds with short segments of DNA before adding the salt solution, causing the particles to grow into various shapes determined by the genetic code of the DNA.

The DNA alphabet comprises four letters: A, T, G and C. The term genetic code refers to the sequence of these letters, called bases. The four bases and their combinations can bind differently with facets of gold nanoseeds and direct the nanoseeds' growth pathways, resulting in different shapes.

. . . . The National Science Foundation supported this work.

(Emphasis added)